

In the US District Court for the State of Oregon

Benjamin Jay Barber

v.

Unitus Community Credit Union,
Rebecca Rich, in her official capacity
as branch manager for Unitus
Unknown John Doe, in his official capacity as
bank teller for Unitus

Case No. 3:22-cv-00134-MO

Motion for Reconsideration

Memorandum of Law

We agree with the reasoning of the Second Circuit in Romandette, 807 F.2d 309, and the Fifth Circuit in Rochon, 828 275*275 F.2d 1107. Therefore, we hold that an incarcerated pro se plaintiff proceeding in forma pauperis is entitled to rely on the U.S. Marshal for service of the summons and complaint, and, having provided the necessary information to help effectuate service, plaintiff should not be penalized by having his or her action dismissed for failure to effect service where the U.S. Marshal or the court clerk has failed to perform the duties required of each of them under 28 U.S.C. § 1915(c) and Rule 4 of the Federal Rules of Civil Procedure.

Puett v. Blandford, 912 F. 2d 270, 272 - Court of Appeals, 9th Circuit 1990

The district court decided that plaintiff was unable to demonstrate good cause for his failure to effect timely service. We disagree. Under the circumstances present here, the utter failure of the clerk and the Marshals Service to accomplish their respective duties to issue and serve process for plaintiff proceeding in forma pauperis constitutes a showing of good cause under Fed. R.Civ.P. 4. In so holding, we align ourselves with those other Courts of Appeal that confer a showing of automatic good cause on similarly situated plaintiffs.

Byrd v. Stone, 94 F. 3d 217, 220 - Court of Appeals, 6th Circuit 1996

What if I Filed *In Forma Pauperis*?

If your Application to Proceed *In Forma Pauperis* is approved, the Court will issue the summons and forward it to the United States Marshal to serve on the defendants at no cost to you. However, first the Court will provide the necessary forms (one per defendant) to you, and you must complete the forms and return them to the Court. The Court will then provide the U.S. Marshal with the form you completed, and the U.S. Marshal will serve the defendant for you.

<https://www.ord.uscourts.gov/phocadownload/userupload/prose/Handbook%20for%20Self-Represented%20Parties.pdf>

7/25/2022



Factual Pleading

The court indicated that I failed to serve the summons on the defendants, I was under the impression that the summons was supposed to be filed by the court, attached is an excerpt from the pro-se filing guide, and that was what I was told when I went to the courthouse.

I was never provided any forms to complete by the court after the approval, and I was under the impression that the summons had already been served by the court, when my in forma pauperis was approved, and the court already had all the information required on the form.

Moreover, the previous filing demonstrated that I attempted to serve the defendant myself at my own expense, however I was told by the Multnomah County Sheriff's department that it would take 3 weeks for them to get it done, and I didn't have anyone else to serve it on my behalf, so I do not have proof of service returned from the Sheriff's department, to provide you yet.

Moreover I delivered the original complaint to the defendants by US mail first class, in addition to personally delivering the complaint to the downtown branch of the Unitus building, on the day that I had originally filed the complaint.

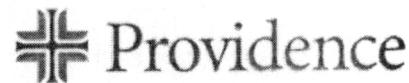
Moreover, when I delivered the complaint to the downtown branch in person, I again tried to resolve the issue, and attempted for a second time to try to open an account, however I was again unlawfully denied the ability to do so. So even if the original complaint is dismissed with prejudice, the court should clarify whether or not I can refile a new one based on the second violation, which was not previously pleaded in the original or amended complaint.

I believe that I have made sufficient efforts to prosecute the matter, and went to the courthouse to resolve the issue when you brought it to my attention, so I wish that you would reconsider your decision in light of these circumstances. Additionally I would like to note that I suffer from Crohns disease, which had caused an anal fissure (bleeding in the large intestines), which has gone untreated because of the waiting time. Attached are those related documents.

AFTER VISIT SUMMARY

Benjamin J. Barber DoB: 6/7/1985

 7/18/2022  PROVIDENCE MILWAUKIE HOSPITAL EMERGENCY CENTER 503-513-1031



Instructions

Your personalized instructions can be found at the end of this document.



Your medications have changed

 START taking:

hydrocortisone (PREPARATION H)
polyethylene glycol (MIRALAX)

Today's Visit

You were seen by Cameron Saffer, MD

Reason for Visit

Rectal Pain

Diagnosis
Anal fissure

AFTER VISIT SUMMARY

Benjamin J. Barber DoB: 6/7/1985

6/19/2022 PROVIDENCE MILWAUKIE HOSPITAL EMERGENCY CENTER 503-513-1031



Instructions



Your medications have changed

START taking:

ibuprofen (ADVIL, MOTRIN)
traMADol (ULTRAM)

Review your updated medication list below.



Read the attached information
Flank Pain, Uncertain Cause (English)

AFTER VISIT SUMMARY

Benjamin J. Barber DoB: 6/7/1985

6/1/2022 8:40 AM Neighborhood Health Center 503-416-1960



What's Next

JUL 29 OFFICE VISIT with Gregory Guffanti, MD
Friday July 29 4:20 PM (Arrive by 4:05 PM)

Neighborhood Health Center
10330 SE 32ND AVE
STE 325
MILWAUKIE OR 97222-6656
503-416-1960

Today's Visit

You saw Samantha Jay Abbott, FNP on Wednesday June 1, 2022. The following issue was addressed: Anorectal fissure.



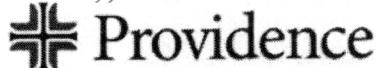
Blood Pressure



BMI
31.60

ED Provider Notes

Mark Nyysti Roberts at 04/10/22 1804



**PROVIDENCE MILWAUKIE HOSPITAL
EMERGENCY DEPARTMENT ENCOUNTER**

**BENJAMIN JAY BARBER
MRN:20001388856**

CHIEF COMPLAINT

Chief Complaint

Patient presents with
• Rectal Bleed

Copy

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Certificate of Service

Certificate of Service

On June 28th 2022 the defendant had the amended complaint served on the company Unitus Community Credit Union by Multnomah County Sheriff's Department civil service, at the following address.

Unitus Westmoreland Branch
1615 SE Bybee Blvd,
Portland, OR 97202



Date June 27th 2022
/s/ Benjamin Barber.

Ben Barber

Multnomah County Sheriff's Office

CIVIL PROCESS UNIT

MCSO Case No. _____ Date 06/27/2022

Name: Benjamin Barber
Address: 10043 SE 32nd Ave
City: Milwaukie State: OR Zip: 97222

		Amount
Court Case No.	<u>3:22-CV-00134-MO</u>	<u>\$50.00</u>
Type of Process	<u>Amend Complaint</u>	
Execution		
Misc. Fees		
<u>Barber v. Unitus</u> PLAINTIFF DEFENDANT		
		Amount Due <u>\$50.00</u>
Check # <u>cash</u>		Total Received <u>\$50.00</u>

No. C 05949

Rec'd By McDLT, 93198
Member Name

BPST
97 PS 331 B